

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No. <b>09 -O-13288-PEM</b>
	)	
<b>ROBERT FRANCIS GRAHAM,</b>	)	
	)	<b>Decision</b>
<b>Member No. 76589,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default disciplinary matter, respondent **Robert Francis Graham** is found culpable, by clear and convincing evidence, of violating his probation conditions as ordered by the California Supreme Court.

In view of respondent's misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be actually suspended from the practice of law for 60 days and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

**II. Pertinent Procedural History**

On July 17, 2009, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly served on respondent a Notice of Disciplinary Charges (NDC) at his official

membership records address. Respondent received the NDC but did not file a response. (Rules Proc. of State Bar, rule 103.)

On the State Bar's motion, respondent's default was entered on November 4, 2009, and respondent was enrolled as an inactive member on November 7, 2009, under Business and Professions Code section 6007, subdivision (e).<sup>1</sup> An order of entry of default was sent to respondent's official address by certified mail.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on December 1, 2009,<sup>2</sup> following the filing of the State Bar's brief on culpability and discipline.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on December 21, 1977, and has been a member of the State Bar of California at all times since that date.

#### **Supreme Court Case No. S166639**

On November 14, 2008, the California Supreme Court ordered respondent suspended from the practice of law for 30 days, that execution of the suspension be stayed, and that he be placed on probation for one year subject to the conditions of probation, recommended by the Hearing Department of the State Bar Court in its order approving stipulation (Supreme Court

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<sup>1</sup> All references to section (§) are to the provisions of the Business and Professions Code, unless otherwise indicated.

<sup>2</sup> Because the State Bar filed its brief on discipline on December 1, 2009, the original submission date of November 30, 2009 is changed to December 1, 2009. The better practice is to adhere to the deadline set by the court under the November 4, 2009 order of entry of default.

case No. S166639; State Bar Court case No. 06-O-14355). The order became effective December 14, 2008, and was duly served on respondent.

Among other probation conditions, respondent was required to:

1. Contact the Office of Probation and schedule a meeting with an assigned probation deputy to discuss the terms and conditions of probation by January 13, 2009;
2. Submit quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation stating under penalty of perjury whether he had complied with the State Bar Act and the Rules of Professional Conduct; and
3. Answer any inquiries of the Office of Probation regarding probation conditions.

Respondent has not scheduled or participated in a meeting with a probation deputy to discuss the terms and conditions of his probation. Respondent did not file the quarterly report due April 10, 2009.

Also, the Office of Probation sent letters to respondent dated December 15, 2008, and May 19, 2009. Although respondent received the letters, he did not reply as requested.

***Count 1: Failure to Comply With Probation Conditions (Bus. & Prof. Code, § 6068, Subd. (k))***

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

Respondent failed to comply with his probation conditions as ordered by the Supreme Court in S166639, in willful violation of section 6068, subdivision (k): (1) by failing to file the April 10, 2009 quarterly report; (2) by failing to schedule a meeting with the Office of Probation to discuss the terms and conditions of his probation; and (3) by failing to respond to the inquiries of the Office of Probation.

#### **IV. Mitigating and Aggravating Circumstances**

##### **A. Mitigation**

No mitigating evidence was offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Att'y. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>3</sup>

##### **B. Aggravation**

There are several aggravating factors. (Std. 1.2(b).)

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

In the underlying matter, respondent stipulated to a 30-day stayed suspension and a one-year probation for his misconduct in one client matter, involving failure to perform legal services with competence, failure to communicate with a client, failure to render appropriate accounts, failure to return client papers, and failure to cooperate with the State Bar.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) He violated several probation conditions.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with the probation conditions even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).) He has yet to contact the Office of Probation or file the April 2009 quarterly report.

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

#### **V. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest

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<sup>3</sup>All further references to standards are to this source.

possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Public protection and attorney rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.)

The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7 and 2.6.)

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.) The court will look to applicable case law for guidance.

Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The extent of the discipline to recommend in this matter is dependent, in part, on the nature of the probation violation and its relationship to respondent’s prior misconduct. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The State Bar urges an actual suspension of 90 days.

“[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Wiener* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards the attorney’s rehabilitation.” (*In the Matter of Wiener, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

Failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this proceeding leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his misconduct.

Although significant discipline is warranted for respondent's probation violations, the court does not believe that imposing an actual suspension of 90 days is necessary to achieve the goals of attorney disciplinary probation.

In view of respondent's misconduct, the case law and the aggravating evidence, placing respondent on an actual suspension for a minimum of 60 days would be appropriate to protect the public and to preserve public confidence in the profession. (See *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567 [30 days' actual suspension for probation violations but with strong mitigation].)

## **VI. Recommendations**

### **A. Discipline**

Accordingly, the court hereby recommends that respondent **Robert Francis Graham** be suspended from the practice of law in California for one year, that said suspension be stayed, and that respondent be actually suspended from the practice of law for a minimum of 60 days. He is to remain suspended until he files and the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

It is further recommended that if he is actually suspended for more than two years, he will remain actually suspended until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii).

It is recommended that respondent be ordered to comply with any probation conditions imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

**B. Multistate Professional Responsibility Exam**

Because he was previously ordered to take and pass the Multistate Professional Responsibility Examination in the underlying matter, S166639, it is not recommended that respondent be ordered to do so in this matter.<sup>4</sup> (Cal. Rules of Court, rule 9.10(b).)

**C. California Rules of Court, Rule 9.20**

It is also recommended that if respondent remains suspended for 90 days or more, the Supreme Court order respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 120 and 130 days, respectively, of the effective date of its order imposing discipline in this matter. Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.<sup>5</sup>

**D. Costs**

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: March \_\_\_\_\_, 2011

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PAT McELROY  
Judge of the State Bar Court

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<sup>4</sup> The court takes judicial notice that respondent has been suspended for his failure to pass the MPRE, effective February 3, 2010.

<sup>5</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)